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JCS44 U.S. PTO**UTILITY PATENT APPLICATION TRANSMITTAL**

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Attorney Docket No. 003801.P004First Named Inventor or Application Identifier Brad HandlerExpress Mail Label No. EL328715629USADDRESS TO: Assistant Commissioner for Patents
Box Patent Application
Washington, D. C. 20231**APPLICATION ELEMENTS**

See MPEP chapter 600 concerning utility patent application contents.

1. X Fee Transmittal Form
(Submit an original, and a duplicate for fee processing)
2. X Specification (Total Pages 18)
(preferred arrangement set forth below)
 - Descriptive Title of the Invention
 - Cross References to Related Applications
 - Statement Regarding Fed sponsored R & D
 - Reference to Microfiche Appendix
 - Background of the Invention
 - Brief Summary of the Invention
 - Brief Description of the Drawings (if filed)
 - Detailed Description
 - Claims
 - Abstract of the Disclosure
3. X Drawings(s) (35 USC 113) (Total Sheets 6)
4. Oath or Declaration (Total Pages)
 - a. Newly Executed (Original or Copy)
 - b. Copy from a Prior Application (37 CFR 1.63(d))
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 - i. DELETIONS OF INVENTOR(S) Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b).
5. Incorporation By Reference (useable if Box 4b is checked)
The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under Box 4b, is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.
6. Microfiche Computer Program (Appendix)
7. Nucleotide and/or Amino Acid Sequence Submission
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 - a. Computer Readable Copy
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ACCOMPANYING APPLICATION PARTS

8. _____ Assignment Papers (cover sheet & documents(s))
9. _____ a. 37 CFR 3.73(b) Statement (where there is an assignee)
_____ b. Power of Attorney
10. _____ English Translation Document (if applicable)
11. _____ a. Information Disclosure Statement (IDS)/PTO-1449
_____ b. Copies of IDS Citations
12. _____ Preliminary Amendment
13. X Return Receipt Postcard (MPEP 503) (Should be specifically itemized)
14. _____ a. Small Entity Statement(s)
_____ b. Statement filed in prior application, Status still proper and desired
15. _____ Certified Copy of Priority Document(s) (if foreign priority is claimed)
16. X Other: Unsigned Declaration and Power of Attorney (Total Pages 5)

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UNITED STATES PATENT APPLICATION
FOR
INTEGRATED AUCTION

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INTEGRATED AUCTION

This application claims the benefit of U.S. Provisional Application No.
60/111,717, filed 12/8/98.

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FIELD OF THE INVENTION

The invention relates generally to the fields of auctioning and online commerce.
More particularly, the invention relates to an integrated auction format that incorporates
15 features of both Internet and traditional, real world auctions.

BACKGROUND OF THE INVENTION

With the advent of online auctioning pioneered by eBay Inc., the assignee of the
present invention, more and more Internet users are realizing the ease and convenience of
20 buying items online. As the leading person-to-person trading site, buyers are compelled
to trade on eBay's web site due to the large amount of content available. Similarly,
sellers are attracted to eBay to conduct business where there are the most buyers. Ebay
currently provides over two million new auctions, and 250,000 new items every day from
which users may choose.

Auction houses that run live, real-time, on-site auctions ("traditional auctions") continue to experience much success. However, geographic barriers, travel costs, and other constraints limit the participation in such auctions.

- 5 It is desirable, therefore, to expand the reach of traditional auctions via the Internet. In particular, it would be advantageous to incorporate the best of both Internet and traditional auctions into an integrated auction format.

BRIEF SUMMARY OF THE INVENTION

A method and apparatus are described for conducting an integrated auction that incorporates various features of traditional and online auctions. According to one aspect
5 of the present invention, the integrated auction includes a live, in-person auction component and an online bidding environment component. Bidding information associated with an item in the online bidding environment is updated to reflect a current bid associated with the item in the live, in-person auction. During the live, in-person auction, a bid may be accepted from an online bidder in the online environment that
10 reflects a maximum price the online bidder is willing to pay for the item. Subsequently, the system bids on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum price.

Other features of the present invention will be apparent from the accompanying drawings and from the detailed description which follows.

BRIEF DESCRIPTION OF THE DRAWINGS

The present invention is illustrated by way of example, and not by way of limitation, in the figures of the accompanying drawings and in which:

5 **Figure 1** is a simplified view of an exemplary client-server environment in which the online portion of an integrated auction may occur according to one embodiment of the present invention.

Figure 2 is an exemplary online auction site screen that allows online bidders to participate in an integrated auction according to one embodiment of the present invention.

10 **Figure 3** is an example of a computer system upon which one embodiment of the present invention may be implemented.

Figure 4 is a high level illustration of the interaction between various devices and processes according to one embodiment of the present invention.

15 **Figure 5** conceptually illustrates the stages of an integrated auction according to one embodiment of the present invention.

Figure 6 is a flow diagram illustrating integrated auction processing according to one embodiment of the present invention.

DETAILED DESCRIPTION

A method and apparatus are described for carrying out an integrated auction that incorporates various features of traditional and online auctions. In the following description, for the purposes of explanation, numerous specific details are set forth in order to provide a thorough understanding of the present invention. It will be apparent, however, to one skilled in the art that the present invention may be practiced without some of these specific details. In other instances, well-known structures and devices are shown in block diagram form.

As will be described in greater detail below, the present invention includes features that seek to enhance the traditional auctioning experience. According to one embodiment, an integrated auction incorporates various features of traditional and Internet auctions (also referred to as online auctions). In a first stage of the integrated auction, e.g., the "pre-auction bidding stage," a starting bid for a traditional, live auction may be established based upon bids received from online bidders. Subsequently, in a second stage of the integrated auction, e.g., the "live auction stage," a live auction is conducted by an auction house, such as Guernsey's, using the highest bid from the pre-auction bidding stage. During the live auction stage, bidding information is updated on the online auction site and online bidders may submit additional maximum proxy amounts. Finally, in an optional third stage of the integrated auction, e.g., the "proxy showdown stage," if an online bidder's maximum proxy price is greater than the highest bid from the live auction stage, then the integrated auction returns to the live auction until the proxy price has been met. Advantageously, in this manner, the reach of traditional auctions may be expanded via the Internet.

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In the preferred embodiment, the steps of the present invention are embodied in machine-executable instructions. The instructions can be used to cause a general-purpose or special-purpose processor which is programmed with the instructions to perform the steps of the present invention. Alternatively, the steps of the present invention might be performed by specific hardware components that contain hardwired logic for performing the steps, or by any combination of programmed computer components and custom hardware components.

The present invention may be provided as a computer program product which may include a machine-readable medium having stored thereon instructions which may be used to program a computer (or other electronic devices) to perform a process according to the present invention. The machine-readable medium may include, but is not limited to, floppy diskettes, optical disks, CD-ROMs, and magneto-optical disks, ROMs, RAMs, EPROMs, EEPROMs, magnet or optical cards, flash memory, or other type of media / machine-readable medium suitable for storing electronic instructions. Moreover, the present invention may also be downloaded as a computer program product, wherein the program may be transferred from a remote computer (e.g., a server) to a requesting computer (e.g., a client) by way of data signals embodied in a carrier wave or other propagation medium via a communication link (e.g., a modem or network connection).

Client-Server Environment

Figure 1 is a simplified view of an exemplary client-server environment, such as the World Wide Web (the Web), in which the online portion of an integrated auction may take place. The architecture of the Web follows a conventional client-server model. The terms "client" and "server" are used to refer to a computer's general role as a requester of

data (the client) or provider of data (the server). Web clients 105 and Web servers 110 communicate using a protocol such as HyperText Transfer Protocol (HTTP). In the Web environment, Web browsers reside on clients and render Web documents (pages) served by the Web servers. The client-server model is used to communicate information

5 between clients 105 and servers 110. Web servers 110 are coupled to the Internet 100 and respond to document requests and/or other queries from Web clients 105. When a user selects a document by submitting its Uniform Resource Locator (URL), a Web browser, such as Netscape Navigator or Internet Explorer, opens a connection to a server 110 and initiates a request (e.g., an HTTP get) for the document. The server 110 delivers

10 the requested document, typically in the form of a text document coded in a standard markup language such as HyperText Markup Language (HTML).

Exemplary Online Auctioning Site Interface

Figure 2 is an exemplary online auction site screen that allows online bidders to

15 participate in an integrated auction. According to one embodiment, when an online bidder requests to view items associated with an integrated auction, screen 200 is presented with a textual list of items 205. In this example, each item 210 includes a hypertext link 215 having a title (or brief description) of the item for sale, an indication

20 220 of whether or not an image of the item is available, the current minimum bid 230, the number of bids received 240, and an auction ending date and/or time 250. Responsive to the selection of the hypertext link 215, a subsequent screen (not shown) may prompt the online bidder to enter his/her maximum bid for the item 210. As will be described further below, by providing a maximum bid amount, a proxy bidding system may bid on behalf of the online bidder as necessary by increasing the online bidder's bid by the current bid

increment until the maximum is reached. Advantageously, in this manner, the online bidder need not keep track of the auction as it proceeds and is assured he/she will not be outbid at the last minute – unless the maximum specified is exceeded.

5 Exemplary Computer System

A computer system 300 representing an exemplary server in which features of the present invention may be implemented will now be described with reference to **Figure 3**.

Computer system 300 comprises a bus or other communication means 301 for communicating information, and a processing means such as processor 302 coupled with bus 301 for processing information. Computer system 300 further comprises a random access memory (RAM) or other dynamic storage device 304 (referred to as main memory), coupled to bus 301 for storing information and instructions to be executed by processor 302. Main memory 304 also may be used for storing temporary variables or other intermediate information during execution of instructions by processor 302. Computer system 300 also comprises a read only memory (ROM) and/or other static storage device 306 coupled to bus 301 for storing static information and instructions for processor 302.

A data storage device 307 such as a magnetic disk or optical disc and its corresponding drive may also be coupled to computer system 300 for storing information and instructions. Computer system 300 can also be coupled via bus 301 to a display device 321, such as a cathode ray tube (CRT) or Liquid Crystal Display (LCD), for displaying information to a computer user. Typically, an alphanumeric input device 322, including alphanumeric and other keys, may be coupled to bus 301 for communicating information and/or command selections to processor 302. Another type of user input device is cursor control 323, such as a mouse, a trackball, or cursor direction keys for communicating

direction information and command selections to processor 302 and for controlling cursor movement on display 321.

A communication device 325 is also coupled to bus 301 for accessing remote servers via the Internet, for example. The communication device 325 may include a modem, a network interface card, or other commercially available network interface devices, such as those used for coupling to an Ethernet, token ring, or other type of network. In any event, in this manner, the computer system 300 may be coupled to a number of clients and/or other servers via a conventional network infrastructure, such as a company's Intranet and/or the Internet, for example.

System Overview

Figure 4 is a high level illustration of the interaction between various devices and processes according to one embodiment of the present invention. According to the embodiment depicted, an online auction site 400 may comprise one or more listing servers 410. In this example, the listing servers 410 include a listing management process 415, a proxy bidding process 425, and a live auction interface 430. Clients 470 interact with the listing management process 415 and the proxy bidding process 425 to view information about items for sale and submit proxy prices, respectively.

The listing management process 415 interacts with online bidders and provides them with information about the items in which they are interested. The listing management process 415 may support a text-based item listing format, such as that depicted in **Figure 2**, and/or a Gallery™ presentation format that includes thumbnail images of the items for sale as described in co-pending US Patent Application No. 09/177,726, entitled "Information Presentation and Management in an Online Trading

Environment” and assigned to the assignee of the present invention (GALLERY is a trademark of eBay Inc. of San Jose, CA).

The proxy bidding process 425 tracks the maximum amounts that online bidders are willing to pay for the items 210. Based upon the maximum amounts provided, the proxy bidding process 425 automatically submits bids on behalf on the online bidders as other bidders (online or on-site bidders) increase the bid price.

The live auction interface 430 provides an interface by which online bids may be communicated to the on-site bidders and live bids may be communicated to the proxy bidding process 425 and updated on various online auction site screens.

While, in order to facilitate explanation, the listing servers 410 are generally discussed as if they were a single device, in actuality, the listing servers 410 may comprise multiple physical and/or logical devices connected in a distributed architecture, and the various functions performed may actually be distributed among multiple devices. For example, any function can be implemented on any number of machines or on a single machine. Also, any process may be divided across multiple machines.

Exemplary Stages of an Integrated Auction

Figure 5 conceptually illustrates the stages of an integrated auction according to one embodiment of the present invention. In this example, an integrated auction comprises three separate and distinct stages: a pre-auction bidding stage 530, a live auction stage 540, and a proxy showdown stage 550. Bidding results may be fed from one stage to the next and the results from a previous stage may serve as the floor for the following stage. For example, an initial round of online bidding 530 taking place over a predetermined period of time may establish a starting bid 510 for the live auction stage

540. At the conclusion of the live auction stage 540, if one or more online bidders have submitted maximum proxy prices that are greater than the final bid from the live auction stage 540, the proxy showdown stage 550 is triggered in which the live auction continues until the maximum proxy price has been met.

5

Integrated Auction Flow

Referring now to the flow diagram of **Figure 6**, exemplary integrated auction processing will now be described. At step 610, a minimum bid for the live auction stage 540 is established by an online auction site 400. For example, one or more online bidders may submit maximum bid amounts to the proxy bidding process 425 to have the proxy bidding process 425 bid on their behalf. Other bidders may choose to monitor the pre-auction bidding stage 530 and periodically submit bids. When the predetermined time period for the pre-auction bidding stage 530 expires, the highest bid is presented to the auction house via the live auction interface 430. In this manner, the starting bid for the live auction stage 540 is established in a new and exciting way, thereby creating additional hype about the auction. At step 620, the auction house conducts a live auction starting the bidding at the dollar amount provided by the online auction site 400. During the live auction, live bids by the on-site bidders may be communicated to the online bidders via the live auction interface 430. Additionally, the online bidders may be provided with teleconferencing or other means of monitoring the progress of the live auction 540. At any rate, at the conclusion of the live auction, the final bid is input into the live auction interface 430. At step 630, a determination is made whether or not to perform a proxy showdown. If one or more online bidders have submitted a maximum proxy price greater than the highest bid from the live auction stage, then processing

continues with step 640. Otherwise, the integrated auction is complete. At step 640, the on-site bidders are pitted against the one or more online bidders' proxies. As above, live bids are presented to the online auction site 400 via the live auction interface 430 to allow the online bidders to view near real-time updates. As explained previously, the proxy bidding process 425 will automatically bid on behalf of the online bidders as necessary until the maximum is exceeded. Therefore, step 640 continues until either all maximum proxy prices have been exceeded or until no further live bids are received.

In the foregoing specification, the invention has been described with reference to specific embodiments thereof. It will, however, be evident that various modifications and changes may be made thereto without departing from the broader spirit and scope of the invention. The specification and drawings are, accordingly, to be regarded in an illustrative rather than a restrictive sense.

CLAIMS

What is claimed is:

- 1 1. A method comprising:
2 updating bidding information associated with an item in a online environment to
3 reflect a current bid associated with the item in a live, in-person auction;
4 accepting a bid from an online bidder in the online environment reflecting the
5 online bidder's maximum proxy price; and
6 bidding on behalf of the online bidder against one or more live bidders that are
7 participating in the live, in-person auction based upon the maximum proxy
8 price.
- 1 2. The method of claim 1, wherein said bidding one behalf of the online bidder
2 comprises bidding an amount that exceeds the current bid so long as the
3 maximum proxy price has not been exceeded and so long as the current bid is not
4 that of the online bidder.
- 1 3. The method of claim 1, further comprising:
2 prior to the live, in-person auction, establishing a starting bid for the item by
3 performing a pre-auction bidding process in the online environment for a
4 predetermined amount of time; and
5 communicating the starting bid for the item to the live, in-person auction.

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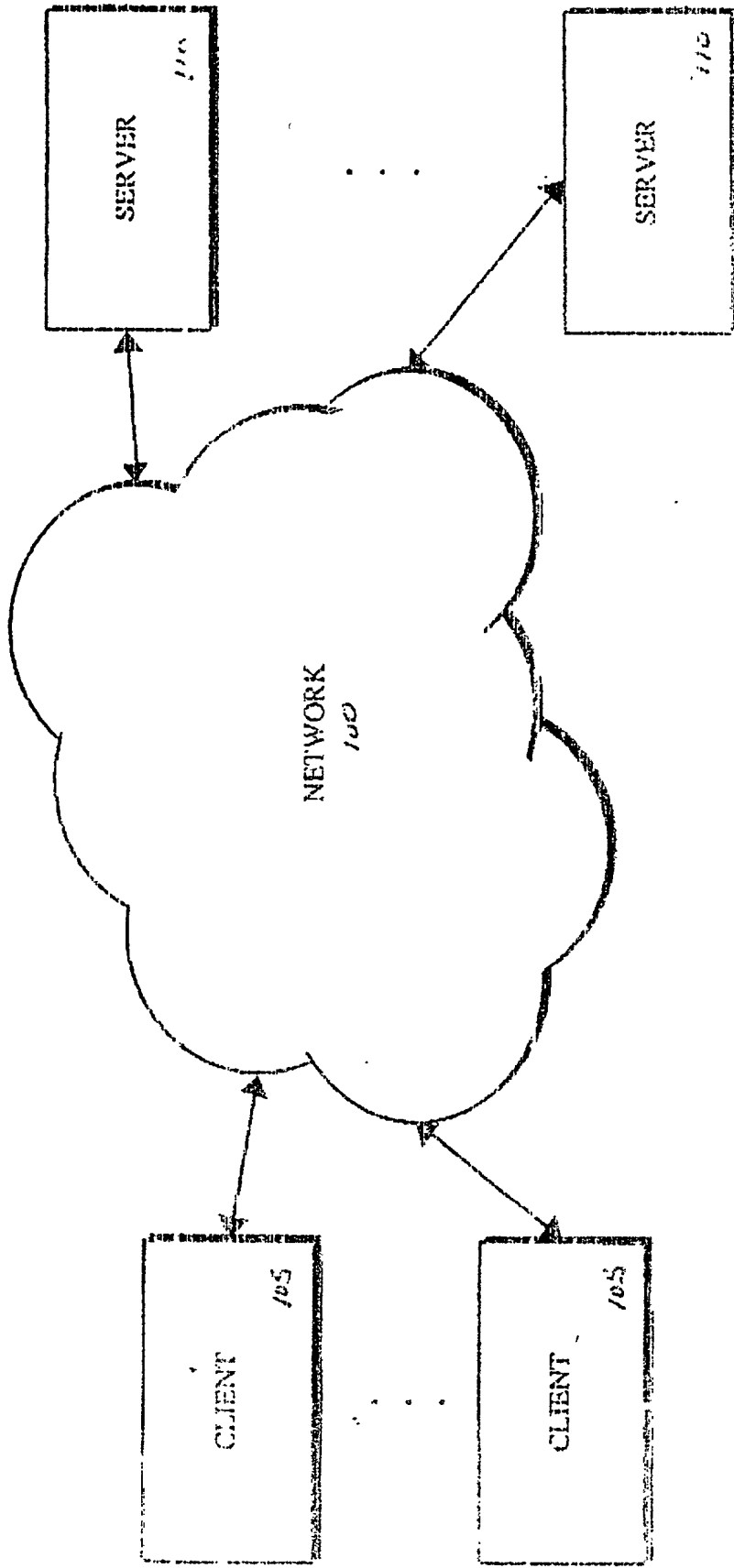
- 1 4. A method comprising:
 - 2 establishing a starting bid for an item for a live portion of an auction by
 - 3 performing a pre-auction bidding process in an online environment for a
 - 4 predetermined amount of time;
 - 5 communicating the starting bid for the item to the live portion of the auction; and
 - 6 during the live auction portion of the auction
 - 7 updating bidding information associated with the item in the online
 - 8 environment to reflect a current bid associated with the item in the
 - 9 live portion of the auction,
 - 10 accepting a bid from an online bidder in the online environment reflecting
 - 11 the online bidder's maximum proxy price, and
 - 12 bidding against one or more live bidders that are present at the live auction
 - 13 portion of the auction until the maximum proxy price has been
 - 14 met.

1 5. A computer system comprising:
2 a storage device having stored therein a one or more routines for integrating an
3 online bidding process with a live portion of an auction;
4 a processor coupled to the storage device for executing the one or more routines to
5 provide feedback to online bidders in an online environment during the
6 live portion of the auction and serve as a proxy bidder for the online
7 bidders, where:
8 a starting bid is established for an item for the live portion of the auction
9 by performing a pre-auction bidding process in the online
10 environment for a predetermined amount of time;
11 feedback is provided to the online bidders by updating bidding information
12 associated with the item in the online environment to reflect a
13 current bid associated with the item during the live portion of the
14 auction, and
15 proxy bidding is accomplished by accepting a bid from one or more of the
16 an online bidders reflecting the online bidders' maximum proxy
17 price and bidding on behalf of the one or more online bidders
18 against one or more live bidders participating in the live portion of
19 the auction until each of the one or more online bidders' maximum
20 proxy price has been met.

- 1 6. A machine-readable medium having stored thereon data representing sequences of
2 instructions, the sequences of instructions which, when executed by a processor,
3 cause the processor to perform the steps of:
4 establishing a starting bid for an item for a live portion of an auction by
5 performing a pre-auction bidding process in an online environment for a
6 predetermined amount of time;
7 communicating the starting bid for the item to the live portion of the auction; and
8 during the live auction portion of the auction
9 updating bidding information associated with the item in the online
10 environment to reflect a current bid associated with the item in the
11 live portion of the auction,
12 accepting a bid from an online bidder in the online environment reflecting
13 the online bidder's maximum proxy price, and
14 bidding against one or more live bidders that are present at the live auction
15 portion of the auction until the maximum proxy price has been
16 met.

ABSTRACT OF THE DISCLOSURE

A method and apparatus are provided for conducting an integrated auction that incorporates various features of traditional and online auctions. According to one aspect of the present invention, the integrated auction includes a live, in-person auction component and an online bidding environment component. Bidding information associated with an item in the online bidding environment is updated to reflect a current bid associated with the item in the live, in-person auction. During the live, in-person auction, a bid may be accepted from an online bidder in the online environment that reflects a maximum price the online bidder is willing to pay for the item. Subsequently, the system bids on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum price.





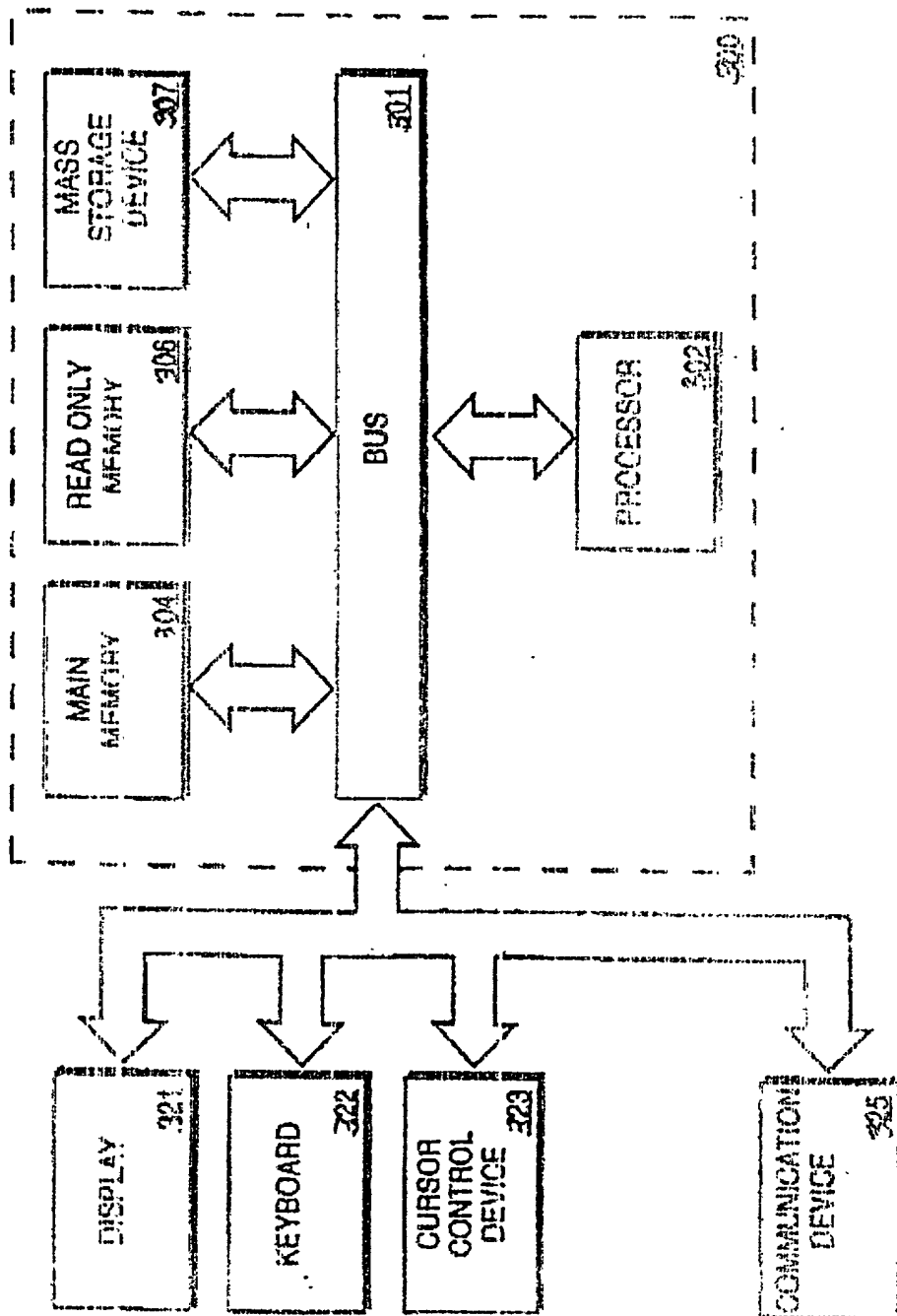
Integrated Auction

Current || New Today || Ending Today || Completed || Going On Now ||

NEW! Vintage handcarved paper florals on wood tray PTC	\$2,000	-	10/26
NEW! "SUPER TRAMP ART 3 STORY BUILDING-BOX" PTC	\$100,000	2	10/26
NEW! Mexican Pottery Vase No. 1 PTC	\$5,000	1	10/26
NEW! Mexican Pottery Vase No. 2 PTC	\$5,000	16	10/26
NEW! Antique	\$3,000	68	10/26
NEW! Mexican Pottery Vase No. 1 PTC	\$5,000	-	10/26
NEW! Mexican Pottery Vase no. 2 PTC	\$5,000	-	10/26
NEW! Hand painted Pottery Wreath with Car. PTC	\$16,000	-	10/26
NEW! (SUPER) Folk Art Tugboat and Crane PTC	\$9,000	-	10/26
NEW! SCRIMSHAW PTC	\$10,000	-	10/26
NEW! Folk Art Hand Carved Litch House	\$15,000	-	10/26
NEW! Antique Hand Made Adirondack 11" Plant Stand PTC	\$9,990	8	10/26
NEW! BUFFALO MINNESOTA FISH DECOR	\$15,000	4	10/26
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NEW! HOLY FRIEZE TRIPLE KITCHEN VIRGIN APPEARS PTC	\$20,000	10	10/26

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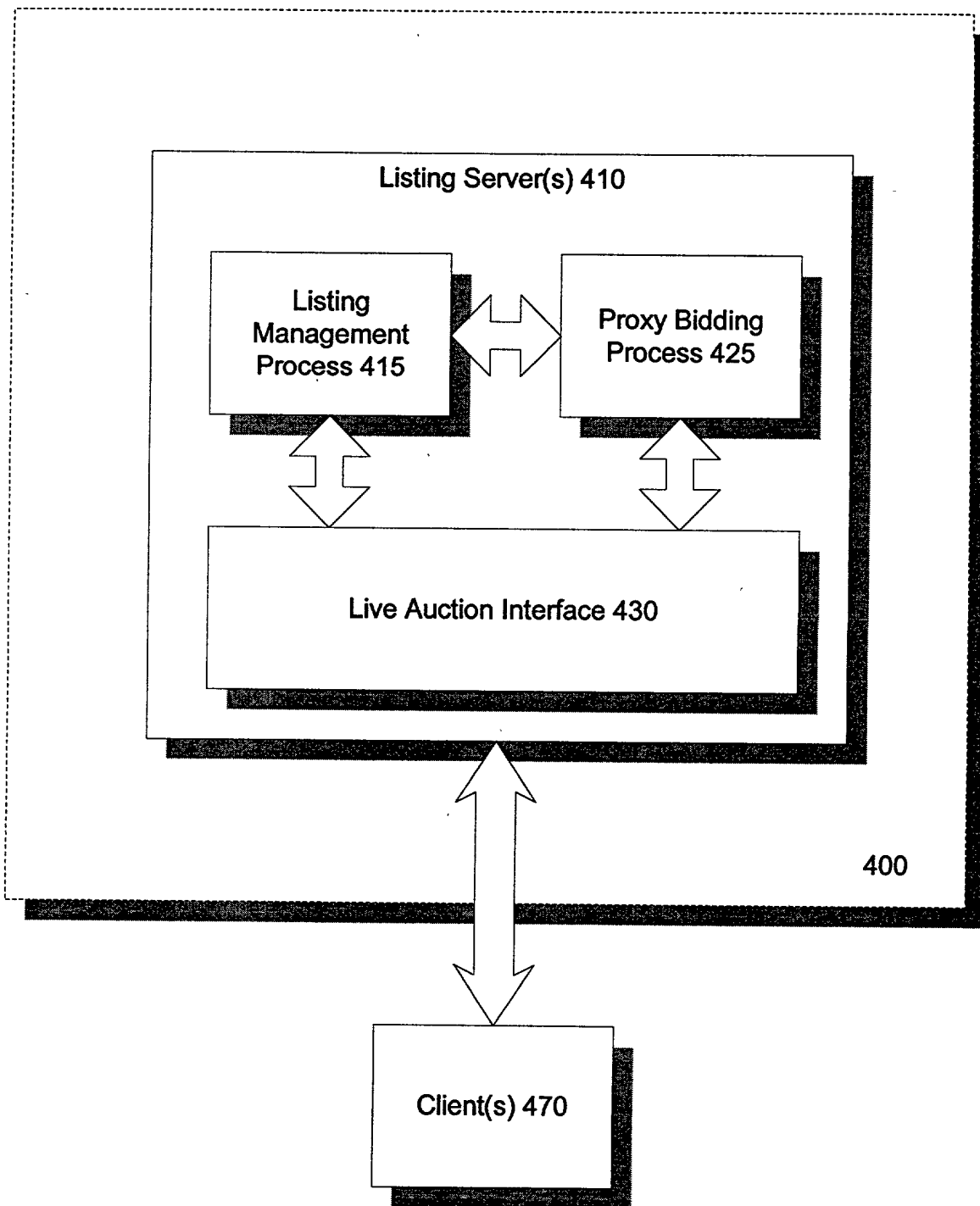


FIGURE 4

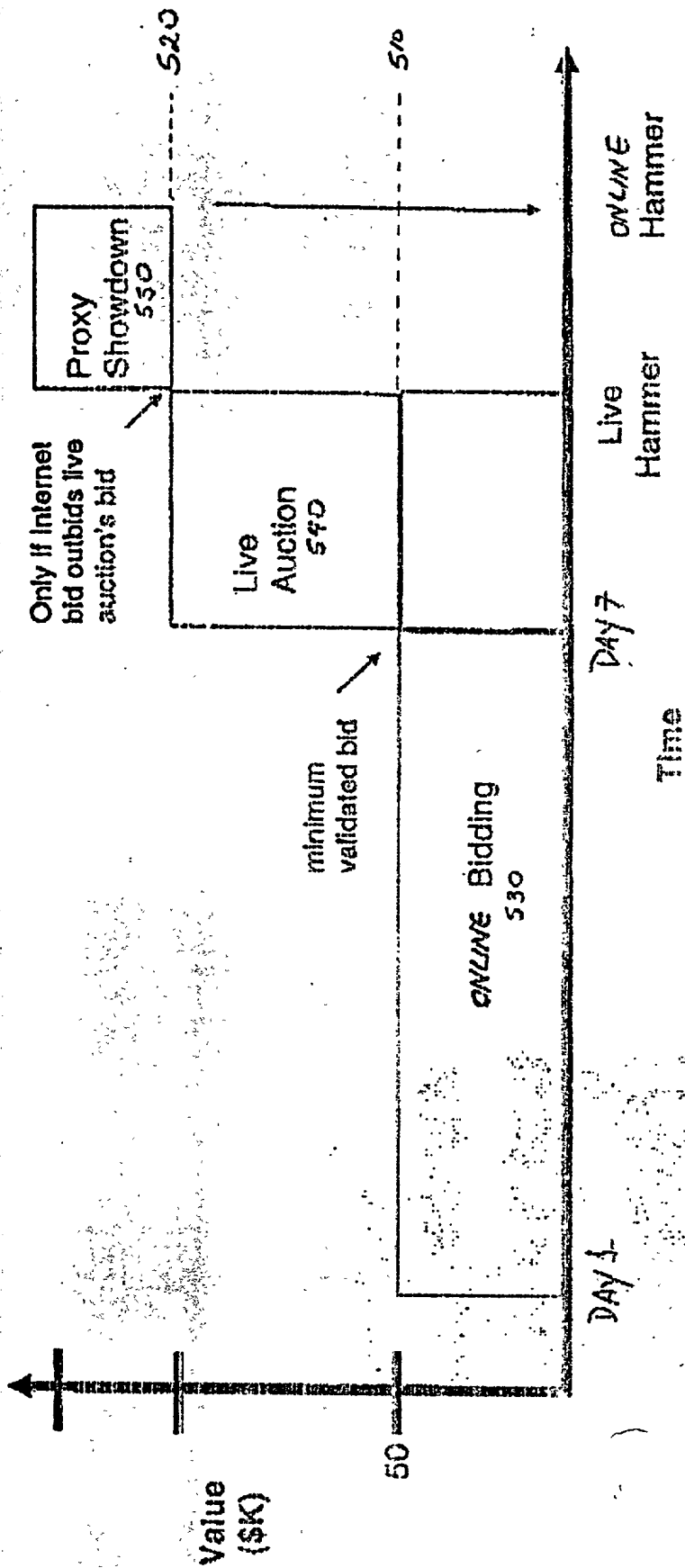


Fig 5

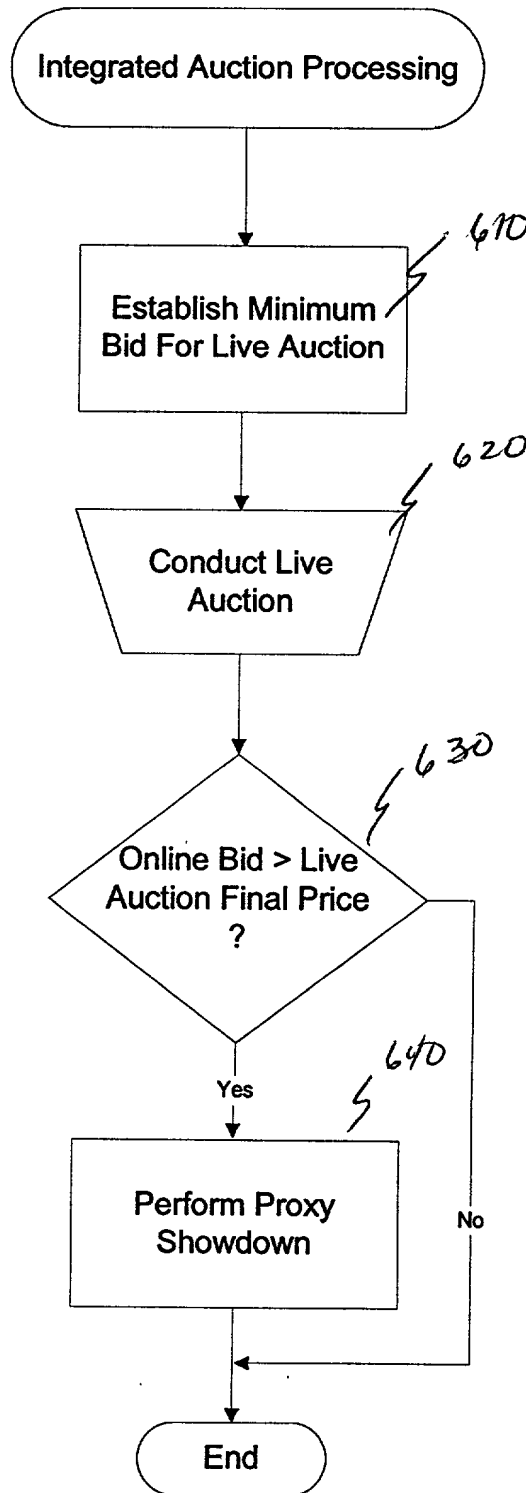


Figure 6

DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below, next to my name.

I believe I am the original, first, and sole inventor (if only one name is listed below) or an original, first, and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled

Integrated Auction

the specification of which

 X is attached hereto.
 was filed on _____ as
United States Application Number _____
or PCT International Application Number _____
and was amended on _____
(if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment referred to above. I do not know and do not believe that the claimed invention was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, and that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (for a utility patent application) or six months (for a design patent application) prior to this application.

I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d), of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)

Priority
Claimed

<u>(Number)</u>	<u>(Country)</u>	<u>(Day/Month/Year Filed)</u>	<u>Yes</u>	<u>No</u>
<u>(Number)</u>	<u>(Country)</u>	<u>(Day/Month/Year Filed)</u>	<u>Yes</u>	<u>No</u>
<u>(Number)</u>	<u>(Country)</u>	<u>(Day/Month/Year Filed)</u>	<u>Yes</u>	<u>No</u>

I hereby claim the benefit under title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below:

<u>60/111,717</u>	<u>12/08/98</u>
<u>(Application Number)</u>	<u>Filing Date</u>
<u>(Application Number)</u>	<u>Filing Date</u>

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

<u>(Application Number)</u>	<u>Filing Date</u>	<u>(Status -- patented, pending, abandoned)</u>
<u>(Application Number)</u>	<u>Filing Date</u>	<u>(Status -- patented, pending, abandoned)</u>

I hereby appoint the persons listed on Appendix A hereto (which is incorporated by reference and a part of this document) as my respective patent attorneys and patent agents, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

Send correspondence to Michael A. DeSanctis, BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP, 12400 Wilshire Boulevard 7th Floor, Los Angeles, California 90025 and direct telephone calls to (303) 740-1980.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of Sole/First Inventor Brad Handler

Inventor's Signature _____ Date _____

Residence _____ (City, State) Citizenship _____ (Country)

Post Office Address _____

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EL328715629US

APPENDIX A

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APPENDIX B

Title 37, Code of Federal Regulations, Section 1.56 Duty to Disclose Information Material to Patentability

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclosure information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made or record in the application, and
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.